IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mitthan Lal Vs. State of Rajasthan
(D.B. Criminal Appeal No.75/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 22-12-2003 in Sessions Case No.71/2002 passed by Shri S.K.Mathur, RHJS, Additional Sessions Judge (Fast Trak) No.1 Dholpur.

Date of Judgment: May 31, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Nemi Chand Chaudhary] for the appellant.
Mr. Vijay Chaudhary]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. C.L.Saini, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Mitthan Lal, the appellant herein, along with co-accused Vinod, Suresh Jagariya, Naresh, Rajendra, Ram Prakasth, Suresh Mudgal and Bhagwan Swaroop, was put to trial before learned Additional Sessions Judge (Fast Track) No.1 Dholpur, who vide judgment dated December 22, 2003 while acquitting co-accused, convicted and sentenced the appellant under section 302 IPC to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

2. As per the prosecution story on January 20, 1995 the informant Biri Singh (Pw.1) submitted a written report (Ex.P-1) at 6 PM with the Police Station Sadar Dholpur to the effect that on the said day at Polling

Booth of Panchgaon finding Suresh s/o Jagan Nath busy in forged polling when Hotam Singh nephew of informant forbade Suresh, he and Mitthan hurled abuses and threatened him of dire consequences. Around 4.30 PM Mitthan armed with gun and Vinod, Suresh Jagariya, Naresh, Rajendra, Ram Prakash, Suresh Mudgal and Bhagwan Das having lathis and stones came over there and started pelting stones. Mitthan opened fire that hit Hotam Singh, who died on the spot. Hotam Singh and injured persons were removed to the hospital. On that report a case was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Dholpur. Charges under sections 147, 148, 336, 323, 325, 307, 302 and 149 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 29 witnesses. In the explanation under Sec.313 Cr.P.C., the accused claimed innocence. Appellant Mitthan stated that he was a contestant for the post of Sarpanch, being candidate of Congress and to debar him from the election he has been implicated falsely. Thereafter he won the election of Sarpanch while he was in Jail and defeated Megh Singh. Ten witnesses in support of their defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant, learned Public Prosecutor and learned counsel for the complainant and with their assistance scanned the material on record.

4. Death of Hotam Singh was undeniably homicidal in nature. As

per Post Mortem Report (Ex.P-15) following ante mortem injuries were found on dead body:-

> 1. Gun shot wound (wound of entry) size 3½ cm x 2½ cm at the medial 1/3rd of left clavicular area blackening edges, edges are inverted 11cm above & medial to the left nipple, oval in shape direction of wound is downward, backward & towards Rt.side.
> 2. Abrasion size 3cm x 1cm at chest Rt.side above and outer the nipple, 12cm above nipple.
> 3. Abrasion size 3.00cm x ½cm over left 1/3rd.

In the opinion of Dr. R.C. Goyal (Pw.11) the cause of death was hemorrhage and shock caused by rupture of left lung and aortic Arch.

5. Coming to the prosecution evidence we notice that Biri Singh (Pw.1), the star witness of the prosecution, in his deposition attributed the gunshot injury of Hotam Singh to appellant Mitthan. According to him Mitthan opened fire at a distance of 150 ft. In his cross examination he deposed as under:-

> गोली 50-60 कदम दूर से चलायी गयी थी। फीटों मे दूरी करीब डेढ सौ फीट होगी। गोली एकदम सीध मे लगी थी। गोली लगी तब होतम का मुंह स्कूल की तरफ था।

Megh Singh (Pw.2) also deposed that distance of fire was 50-60 steps:-

> गोली होतम को करीब 50-60 कदम दूर से मारी गई थी।

According to Devi Prasad (Pw.3) the gun was fired at a distance of 60 steps:-

> गोली साठ कदम दूर से मारी थी।

6. Since the gunshot wound sustained by deceased had blackening

edges,Dr.R.C.Goyal (Pw.11) opined that injury could have been caused by opening fire at a distance of about four feets only. In his cross examination Dr.R.C.Goyal stated thus:-

> "जो चोट मृतक होतम के शरीर पर गोली के घाव के रूप में पायी गयी वह मृतक से करीब तीन चार फीट की दूरी से ही मारा जाना संभव है क्योंकि उस चोट पर ब्लेकनिंग मौजूद थी इससे अधिक दूरी से गोली चलाकर मारने से घाव पर इस तरह की ब्लेकनिंग घाव पर मौजूद नहीं होगी।"

7. Testimony of Dr. R.C.Goyal gets belied even from the site plan (Ex.P-3) where the place of incident was as under:-

> "Xस्थान पर फसल गेहू जौ तथा सरसों की टूटी पडी हुई है तथा जगह-2 पर खून पडा हुआ है। घटनास्थल X से A स्थान की दूरी करीब 60 कदम है जहां से मुल0 द्वारा गोली चलाना बताया गया है।"

8. Jaipal Singh IO (Pw.26) admitted in his cross examination that he did not make investigation from Police Constables or Polling Agents:-

> "कर्मचारी पुलिस कर्मचारी पोलिंग एजेन्ट, उम्मीदवार किसी से भी कोई तफतीश नहीं की ... मैंने पंचगांव पोलिंग स्टेशन के पास दुकान है उन दुकानदारों के बयान नहीं लिये।"

9. It is contended by learned counsel for the appellant that since the testimony of Biri Singh, Megh Singh and Devi Prasad is belied by the medical evidence it deserves to be discarded. Learned counsel took us through Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition, wherein it has been mentioned at page 721 thus:-

> "Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. In the absence of powder residue, no distinction can be made between one distant shot and another, as far as distance is concerned."

10. Per contra, learned counsel for the complainant canvassed that Biri Singh is a rustic villager and on technical ground his truthful version cannot be rejected. This court should keep in mind the rural background of the witness and scenario in which the incident had happened and should not appreciate the testimony from rational angle. Reliance is placed on State of Punjab v. Hakam Singh (2005)7 SCC 408. It is further contended that firing range of gun differs from gun to gun. Reliance is placed on State of Himachal Pradesh Vs. Mast Ram (2004)8 SCC 660, wherein the Apex Court in para 4 indicated thus:-

> "While it is true that generally the firing range of a gun differs from gun to gun, the opinion of the High Court that firing range of DBML gun and SBML gun differs is based on no expert opinion and the same is based on conjectures and surmises."

11. We have considered the submissions. In Ram Narain Vs. State (AIR 1975 SC 1727) Hon'ble Supreme Court indicated that if the evidence of the witnesses is totally inconsistent with the medical evidence, unless reasonably explained, it is sufficient to discard the entire case.

12. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirements of proof can not lie in the realm of surmises and conjectures. Although, the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts

must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the material placed on record.

13. LORD DENNING in Bater Vs. Bater (1950)2 All ER 458, observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

14. In Gurbachan Singh Vs. Satpal Singh (AIR 1990 SC 209) the Hon'ble Supreme Court laid down that the conscience of the Court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment.

15. In State of Karnataka V. Ramanjanappa (2001)8 SCC 387 their Lordships of the Supreme Court indicated that the graver the offence, greater should be the care taken to see that neither an innocent person is convicted nor a guilty allowed to escape.

16. In the instant case there are certain broad incongruities staring at the prosecution version against the appellant. They can be narrated below:-

(i) The gun allegedly recovered from the appellant was not used in the commission of offence. Learned trial Court at page 51 of the judgment observed thus:-

> "मृतक के शरीर से निकाली गई बुलेट को भी जांच हेतु विधि विज्ञान प्रयोगशाला जयपुर को भेजा गया था जिसकी भी जांच रिपोर्ट अभिलेख पर मौजूद है लेकिन अभियोजन की ओर से इसे साक्ष्य में पेश नहीं किया गया। जो बन्दूक न्यायालय में पेश हुई उसमे वह बुलेट डाल

कर देखी गई लेकिन वह बुलेट उस बन्दूक की नाल में जाना नहीं पाया गया। इससे ऐसा प्रतीत होता है कि जो बन्दूक मिठनलाल द्वारा न्यायालय में पेश की गई वो बन्दूक नहीं थी जिसका प्रयोग अपराध के समय किया गया।"

(ii) Testimony of Biri Singh, Megh Singh and Devi Prasad is belied by the medical evidence and site plan drawn by the Investigating Officer.

(iii) As many as eight accused were put to trial before the learned trial Judge, out of them seven stood acquitted and the prosecution evidence was not found reliable qua the said accused.

(iv) Statement under section 313 CrPC made by appellant “that he was the contestant for the post of Sarpanch and in order to debar him from the election he was falsely implicated in the case and even from the Jail he defeated Megh Singh in the elections”, was not at all considered by the learned trial court.

(v) Independent witness was not examined deliberately by the IO and finding of learned trial Judge is based on the testimony of interested and partisan witnesses.

17. We thus find that the prosecution has not established the guilt against the appellant beyond a reasonable doubt. Possibility of over implication of the appellant because of political enmity cannot be ruled out in the facts and circumstances of the case.

18. For these reasons, we allow the appeal and acquit the appellant of the charge under section 302 IPC. Appellant Mitthan Lal, who is in jail, he shall be set at liberty, forthwith if he is not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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